premises, with all liberties and privileges thereunto belonging." These words standing alone cannot be held to have the effect of enabling him to carry away everything, whatever the consequences might be. The other clause, which had been much relied on, was that Belasyse in leading away the coal "would do as little damage and spoil to the soil as he could conveniently make or do." He did not, however, think that a clause restricting the right of the lessor could be raised into any implication enabling him to destroy that privilege which he had conferred, viz., the surface in its existing state, to be used in its existing state with all the benefits that every surface-owner has, unless he has distinctly contracted himself out of his right. As to the question whether there has been any letting down of the surface soil, there does not seem to be much dispute on the evidence; but that would not prevent the plaintiff having a decree. There is a distinct assertion of the right. What he should do would, under all the circumstances of the case, be, to dismiss the bill with costs as far as regards the relief sought by the two first paragraphs of the prayer, and then to restrain the defendants, according to the third paragraph, "from working in such a manner as to occasion any further subsidence or alteration of the surface of the land," with an inquiry whether the plaintiff had sustained any and what damage in respect of the working of the defendants other than that which has been compensated by the terms of the former award. Upon that part of the case the plaintiff must have his costs; the one set of costs to be set off against the other.

Decree accordingly.

Court of Admiralty.

THE HELEN.

In a suit upon an agreement contemplating a breach of blockade of the ports of the Confederate States of America, and upon a motion to strike out the fourth article of the defendant's answer which pleaded that such agreement was not binding by reason of a breach of blockade being illegal,

Held, that a breach of blockade by neutrals is not an offence against the municipal law of this country.

Ordinarily, decisions of the H. of L. and the P. C. and the Courts of Common Law are absolutely binding upon the Court of Admiralty.

Brett, Q. C., and *E. C. Clarkson*, for plaintiff.

Milward, Q. C., and *Pritchard*, for defendant.

The facts of this case sufficiently appear in the judgment. In the argument the following cases were referred to: *Santissima Trinidad*, 7 Wheat. Rep. 340; *Richardson* v. *The Marine Insurance Co.*, 6 Mass. Rep. 113; *Seaton, Maitland & Co.* v. *Low*, 1 Johns. Rep.; Arnould 763, 764, 766, 773; 3 Kent's Com. 367; 2 Parsons 95; Phillips, c. 3, s. 2, 163; Marshall 37; Maud & Pollock 309; 2 Twiss 297.

DR. LUSHINGTON.—This is a motion by the plaintiff to reject the fourth article of the defendant's answer. The parties in this cause are John Andrews Wardell, formerly the master of the *Helen*, plaintiff; and the Albion Trading Company, the owners of the ship, defendants. The master sues for wages, with certain premiums added, alleged to have been earned between July 1864 and March 1865. The answer states that, according to the agreement as set forth by the defendants, the plaintiff has been paid all that was due to him. This part of the answer is not objected to. The fourth and last article is the one objected to. It alleges that the agreement was entered into for the purpose of breaking the blockade of the Southern States of America; that such an agreement is contrary to law, and cannot be enforced by this court. In the course of the argument, the judgment recently delivered by Lord WESTBURY whilst he was Lord Chancellor, in *Ex parte Chavasse*, 6 N. R. 26, was cited as governing the case. The law there laid down is briefly stated, that a contract of partnership in blockade running is not contrary to the municipal law of this country; and by the decree the partnership was declared valid, and the accounts ordered accordingly. It was admitted that this decision is directly applicable to the present case. A decision of the Lord Chancellor is to be treated by the court with the greatest respect; but is it absolutely binding? Decisions of the following tribunals are absolutely binding upon the Court of Admiralty, viz., the House of Lords, the Privy Council, and, when deciding upon the construction of a statute, the courts of common law. All, then, that this court has to do, is to inquire if such decision is applicable to the case before it. If so, then it is the duty of the court to obey whatever may be its own judgment. On the present occasion no decision has been cited from the House of Lords, the

Privy Council, or the courts of common law. But, as an intimation has been given that this case will be carried to the Judicial Committee, that tribunal might be inclined to consider me remiss in my duty if I had omitted to form an independent judgment on the case, and to state my reasons for so doing. It is, I conceive, admitted on all hands that the court must enforce the agreement with the master unless it is satisfied that such agreement is illegal by the municipal law of Great Britain. In order to prove this proposition, the defendants say that the agreement to break the blockade by a neutral ship is on the part of all parties concerned illegal according to the law of nations, which is a part of the municipal law of this country; *ergo*, this contract is illegal by municipal law. Now, a good deal may depend on the sense in which the word "illegal" is used. I am strongly inclined to think that the defendants attach to it a more extensive meaning than it can properly bear, or was intended to bear by those who used it. The true meaning, I think, is that all such contracts are illegal so far, that if carried out they would lead to acts which might under certain circumstances expose the parties concerned to such penal consequences as are sanctioned by international law for breach of blockade or for the carrying of contraband. If so, the illegality is of a limited character. For instance, suppose a vessel, after breaking the blockade, completes her voyage home, and is afterwards seized on another voyage, the original taint of illegality, whatever it may have been, is purged, and the ship cannot be condemned; yet if the voyage was *ab initio* wholly and absolutely illegal both by the law of nations and the municipal law, why should the successful termination purge the offence? Let me consider the relative situation of the parties. A neutral country has a right to trade with other countries in time of peace. One of these countries becomes a belligerent and is blockaded. Why should the rights of the neutral be affected by the acts of the other belligerent? The answer of the blockading power is, "Mine is a just and necessary war;" a matter which in ordinary cases a neutral cannot question. The belligerent further says, "I must seize contraband. I must enforce blockade to carry on the war." In this state of things there has been a long and admitted usage on the part of all civilized states, a concession by both parties—the belligerent and neutral—an universal usage which constitutes the law of nations. It is only with reference to

this usage that the belligerent can interfere with the neutral. Suppose no question of blockade or contraband, no belligerent could claim a right of seizure on the high seas of a neutral vessel going to the port of another belligerent, however essential to his interest it might be so to do. What is the usage as to blockade? There are several conditions to be observed in order to justify the seizure of a ship. Amongst other things the blockade must be effective, and, save accidental interruption by weather, constantly enforced. The neutral vessel must be taken *in delicto*. The blockade must be enforced against all nations alike, including the belligerent one. When all the necessary conditions are satisfied, then by the law of nations the belligerent is allowed to capture and condemn neutral vessels without remonstrance from the neutral state. It never has been a part of admitted common usage that such voyages should be deemed illegal by the neutral state, still less that the neutral state should be bound to prevent them. The belligerent has not a shadow of right to require more than universal usage has given him, amongst which is not included the power to say to the neutral, "You shall help me to enforce my belligerent right by curtailing your own freedom of commerce, and making that illegal by your own law which was not so before." This doctrine is not inconsistent with the maxim that the law of nations is part of the law of this country. The fact is, the law of nations has never declared that a neutral state is bound to impede or diminish its own trade by municipal restriction; for our own Foreign Enlistment Act is itself a proof that, to constitute transactions between British subjects when neutrals and belligerents a municipal offence by the law of Great Britain a statute was necessary. If the acts mentioned in that statute were in themselves a violation of municipal law, why any statute at all? I am now speaking of fitting out ships of war; not of levying soldiers, which stands upon a different footing. I may here say, that in principle there is no essential difference whether the question of breach of municipal law is raised with regard to contraband or breach of blockade. Then how stands the case upon authority? Mr. Duer is the only text-writer who maintains an opinion contrary to what I have stated to be the law. He maintains it with much ability and acuteness, but he stands alone. He, however, admits that an insurance of a contraband cargo is no offence against the municipal law of a neutral country according to the practice of all

the principal states of Continental Europe, and in the American courts the question has been more than once agitated, but with the same result. In the English courts the only case in which the point has been actually decided, is the recent case (above cited) before WESTBURY, L. C. With regard to the cases mentioned in Mr. Duer's book (*Naylor* v. *Naylor*, 9 B. & C. 718; *Mederas* v. *Hill*, 8 Bing. 231), it is enough to say that, in the view which the court eventually took of the facts, the question of law did not arise. It is in those two cases impossible to say with certainty what was the opinion of the judges at Nisi Prius. I cannot entertain any doubt as to the judgment I ought to pronounce in this case. It appears that principle, authority, and usage unite in calling on me to reject the new doctrine that to carry on trade with a blockaded port is, or ought to be, a municipal offence by the law of nations. I must direct the fourth article of the answer to be struck out. I cannot pass by the fact that the attempt to introduce this novel doctrine comes from an avowed *particeps criminis*, who seeks to benefit himself by it. As he has failed in every respect, he must pay the costs of his experiment.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MASSACHUSETTS.[1]

SUPREME COURT OF NEW YORK.[2]

SUPREME COURT OF PENNSYLVANIA.[3]

ACCOUNT RENDER.

Report of Auditor—Court may refer back Report for Error of Calculation—Power of Auditor as to rehearing.—In an action of account render, the adjudication of the auditor is final, and not subject to the revision of the court where no issue of fact or law is demanded, except in case of his misconduct: *Stewart* v. *Bowen et al.*, 13 Wright.

The court may however refer the report back to the auditor for an error of calculation: but he has no power to rehear the parties, and his report on such rehearing will be set aside, and the original report confirmed: *Id.*

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[1] From Charles Allen, Esq., Reporter; to appear in vol. 9 of his Reports.

[2] From Hon. O. L. Barbour, Reporter; to appear in vol. 43 of his Reports.

[3] From R. E. Wright, Esq., Reporter; to appear in vol. 13 of his Reports.